

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 827 Meadow Pointe Community Development District
SPONSOR(S): Littlefield
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u></u>	<u>Mitchell</u>	<u>Cutchins</u>
2) <u>Local Government & Veterans' Affairs</u>	<u></u>	<u></u>	<u></u>
3) <u>Judiciary</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This is a local bill relating to the Meadow Pointe Community Development District and the Meadow Pointe II Community Development in Pasco County.

These two community development districts were established based on the premise that community development districts could enforce covenants and restrictions related to property. This is reflected in their recorded declarations of covenants and restrictions. Purchasers were made aware of this through copies of the deed restrictions provided at the time of purchase. As such, no mandatory homeowners association, which usually has the responsibility for enforcing deed restrictions, was formed. The powers of community development districts do not, after a court decision in 2000, include the power to enforce covenants and deed restrictions.

Some of the residents of these community development districts believe that there is no effective mechanism to conduct architectural review or enforce the covenants and deed restrictions without a mandatory homeowners association, the community development district, or the developer to do so.

This local bill gives these two community development districts the authority for architectural review and enforcement of covenant and deed restrictions.

Such a local bill conflicts with to the uniformity and preemption provisions of the Uniform Community Development District Act of 1980 in Chapter 190, Florida Statutes, but may be necessary given the unique situation of these two community development districts.

Such a local bill local bill conflicts with the uniformity provisions, potentially the prohibition against the adoption of land development codes, the exclusive charter requirement, and the general and special powers set forth in the Uniform Community Development District Act of 1980. As such, it may create an exemption from general law.

Since this bill appears to create an exemption from general law, it may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills pursuant to House Rule 5.5(b).

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0827.lgv.doc
DATE: February 12, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Chapter 190, Florida Statutes, the Uniform Community Development District Act of 1980, sets forth the uniform procedure for the establishment and operation of a particular type of independent special district, the community development district (CDD), which serves as an alternative method to manage and finance basic services for community development.¹ There are currently 233 active CDDs in Florida.²

Uniformity

The title of the act, the Uniform Community Development District Act of 1980³, and the legislative findings, policies and intent for the Act emphasize the need for uniformity as it relates to CDDs:

There is a need for uniform, focused, and fair procedures in state law to provide a reasonable alternative for the establishment, power, operation, and duration of independent districts to manage and finance basic community development services;⁴

That the exercise by any independent district of its powers as set forth by uniform general law comply with all applicable governmental laws, rules, regulations, and policies governing planning and permitting of the development to be serviced by the district...⁵

That the process of establishing such a district pursuant to uniform general law be fair and based only on factors material to managing and financing the service-delivery function of the district, so that any matter concerning permitting or planning of the development is not material or relevant.⁶

It is the legislative intent and purpose, based upon, and consistent with, its findings of fact and declarations of policy, to authorize a uniform procedure by general law to establish an independent special district as an alternative method to manage and finance basic services for community development. It is further the legislative intent and purpose to provide by general law

¹ See Fla. Stat. § 190.002 (2003).

² See Florida Department of Community Affairs, Division of Housing and Community Development, Special District Information Program, *The Official List of Special Districts Online, Create Your Own Report* (visited Jan. 29, 2003) <<http://www.floridaspecialdistricts.org/OfficialList/criteria.asp>>.

³ See Fla. Stat. § 190.001 (2003).

⁴ See Fla. Stat. § 190.002(1)(a) (2003).

⁵ See Fla. Stat. § 190.002(2)(c) (2003).

⁶ See Fla. Stat. § 190.002(2)(d) (2003).

for the uniform operation, exercise of power, and procedure for termination of any such independent district.⁷

Preemption

Section 190.004, Florida Statutes, provides that CDDs do not have the power of a local government to adopt a land development code, which can contain regulations related to architectural review. Moreover, the exclusive charter for a CDD, which sets forth its powers, is the provisions of the Uniform Community Development District Act of 1980.⁸

Powers of a CDD

Among the general powers granted to a CDD: sue and be sued, participate in the state retirement system, contract for services, borrow money, accept gifts, adopt rules and orders, maintain an office, lease, issue bonds, raise money by user charges or fees, assess and impose ad valorem taxes upon lands in the CDD, and levy and enforce special assessments.⁹

CDDs also have special powers related to the following systems, facilities, and basic infrastructures: water management, water supply, sewer, wastewater management, roads, bridges, culverts, street lights, buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, signage, environmental contamination, conservation areas, mitigation areas, and wildlife habitat.¹⁰

CDDs can also be authorized by local governments to address: parks and facilities for indoor and outdoor recreational, cultural, and educational uses; fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment; school buildings and related structures; security; control and elimination of mosquitoes and other arthropods of public health importance; waste collection and disposal.¹¹

While the uniform act permits CDDs “to exercise all of the powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by this act,” these powers do not include the power to enforce covenants and deed restrictions.¹²

Thus, in order to provide a CDD with these powers the uniform act would have to be amended. Yet, amending the uniform act to permit enforcement of deed restrictions by CDDs which meet certain limited criteria can be problematic.¹³

So, to the extent that the lack of deed restriction powers is not a problem faced by all CDDs, a local bill could address this issue. This is the purpose behind this bill.

⁷ See Fla. Stat. § 190.002(3) (2003).

⁸ See Fla. Stat. § 190.004(4) (2003).

⁹ See Fla. Stat. § 190.011 (2003).

¹⁰ See Fla. Stat. § 190.012(1) (2003).

¹¹ See Fla. Stat. § 190.012(2) (2003).

¹² *Hernandez v. Trout Creek Dev. Corp.*, 779 So.2d 360, 362 (Fla. 2d DCA 2000)(“We reject this reading of subsection 190.011(15) as overly expansive, and contrary to the general purpose of delivery and management of community development services as contemplated by the statute.”)

¹³ See e-mail and letter from Bill Hunter, President, Association of Florida Community Developers to members of the Senate Committee on Comprehensive Planning and staff (Feb. 12, 2004)(expressing concerns about an amendment to legislation relating to Chapter 190, Florida Statutes, which would provide certain CDDs the power to enforce deed restrictions because: “there is no notice to homeowners as to which covenants and restrictions will be enforceable by a CDD and which will not...[it] requires the CDD to adopt those covenants and restrictions by administrative rule...[it] is silent as to what enforcement authority the CDD would have (e.g., would a homeowner bring a rule challenge? could the CDD fine the offender?)... [it] should clarify its reference to enforcing those items in a ‘written instrument.’”).

Background on Meadow Pointe

This local bill relates to the Meadow Pointe CDD and the Meadow Pointe II CDD in Pasco County. Proponents of the bill argue that the situation in Meadow Point is unique:¹⁴

Meadow Pointe is a development of approximately 3,500 homes with 25 villages. Only 5 of the villages have mandatory homeowner associations which are charged with providing certain services unique to their villages and enforcing covenants and restrictions for the properties within their villages.

When Meadow Pointe was established, the declaration of covenants and restrictions authorized the board of the CDD to institute appropriate legal proceedings to enforce the covenants and restrictions, even if the CDD did not own the property.¹⁵ Purchasers were made aware of this intent by being provided copies of the deed restrictions at the time of purchase.

Since CDDs are not permitted to enforce covenants and deed restrictions¹⁶, that responsibility stayed with the developer. In November 2002, the developer discontinued architectural review and deed restriction enforcement. Residents took control of the *voluntary* homeowners association at that time, but only a small percentage of the eligible property owners have joined. As a voluntary homeowners association, it is limited in its possible remedies since it cannot levy fines or suspend use rights like mandatory homeowner associations can under Chapter 720, Florida Statutes. The only remedy the voluntary homeowners association has is to file lawsuits against violating property owners. Yet this remedy is precluded due to lack of funds because of the voluntary nature of the homeowners association.

There does not seem to be any other development that has one or more CDDs with deed restrictions that authorize a CDD to conduct architectural review and enforcement of covenants. Thus, approval of the local bill would not be precedent setting.

Local Bill for Meadow Pointe

This bill requires the owner of residential property within the Meadow Pointe CDD and the Meadow Pointe II CDD to submit plans related to appearance, color, texture of materials, and architectural design to the board of the CDD when applying for a permit for the erection of any new building or for alterations or additions to any existing building on a residential parcel. The bill provides that the board of the CDD will approve the plans or recommend modifications to the plan within 30 calendar days with the approval and recommendations to be based on judicially reviewable standards. If modifications are required, the bill requires the owner to resubmit the amended plan to the CDD board for approval and permits the owner to apply to the court of appropriate jurisdiction for relief if agreement cannot be reached.

This bill also allows the Meadow Pointe CDD and the Meadow Pointe II CDD to enforce deed restrictions as well as use actions at law or in equity to redress alleged failure or refusal to comply with said restrictions.

The bill permits these CDDs to levy fines and suspend the use of rights in accordance with the provisions of section 720.305(2), Florida Statutes, when its rules so provide.

¹⁴ See James P. Bovis, Board of Supervisors, Meadow Pointe II CDD, *Local Bill for Meadow Pointe CDD and Meadow Pointe II CDD* (2003)(on file with the Committee on Local Government & Veterans' Affairs).

¹⁵ See, e.g., Declaration of Restrictions as recorded Feb. 20, 1997 in Official Records book 3700, pages 1041-1047, of the public records of Pasco County.

¹⁶ See *supra* note 6.

This bill excludes the Villages of Longleaf, Lettingwell, Vermillion, Covina Key, and Sedgewick within the Meadow Point II CDD, which have mandatory homeowners associations.

Exemption from General Law

This bill appears to create an exemption from general law:

- As a local bill, it conflicts with the uniformity provisions of Chapter 190, Florida Statutes.
- By providing the authority for the CDD to review “the appearance, color, texture of materials, and architectural design of the exterior of” buildings when “an owner of residential property applies for a permit for the erection of any new building or for alterations or additions to any existing building on a residential parcel,” the bill may allow the CDD to adopt land development regulations.¹⁷ Land development regulations are part of land development codes which CDDs, as provided in subsection (3) of section 190.004, Florida Statutes, do not have the power of a local government to adopt.¹⁸
- The exclusive charter for these two CDDs would no longer be Chapter 190, Florida Statutes, as required by subsection (4) section 190.004, Florida Statutes.
- This bill provides additional powers other than those provided for CDDs in sections 190.011 and 190.012, Florida Statutes.

Since this bill appears to create an exemption from general law, it may not placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills pursuant to House Rule 5.5(b).

C. SECTION DIRECTORY:

- Section 1: Provides an exemption from any other provision of law; permits architectural review by the governing board of the CDD; provides timelines for review; requires standards; provides for judicial relief.
- Section 2: Provides an exemption from any other provision of law; permits the governing board of the CDD to enforce deed restrictions within its respective district and provides powers in furtherance thereof.
- Section 3: Excludes certain “Villages,” which have homeowners associations, from the provisions of the bill.
- Section 4: Provides that the bill will take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? WHERE?

An Affidavit of Proof of Publication states that a Notice of Legislation was published in The Pasco Tribune on January 23, 2004.

B. REFERENDUM(S) REQUIRED? Yes ☐ No ☒

¹⁷ See Fla. Stat. § 163.3164(23) (2003) (“Land development regulations” means ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land.”)

¹⁸ But see Fla. Stat. §163.3164 (2003) (which does not specifically define “land development code”).

IF YES, WHEN?

No referendum is required in the bill, but was included as part of the Notice of Legislation.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

The Notice of Legislation indicates that a referendum will be part of the bill, when such a referendum is not provided.¹⁹

B. RULE-MAKING AUTHORITY:

Requires the boards of the CDDs to make approvals and recommendations as to plans relating to appearance, color, texture of materials, and architectural design based upon adopted, judicially reviewable standards. It is not clear whether those standards already exist or would have to be developed.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The bill makes "applying for a permit" the mechanism which triggers the review of plans relating to appearance, color, texture of materials, and architectural design. It is not clear from this language what permit is being referenced and to what entity the application is being made. This language would also seem to restrict the application of this provision to those projects which require a permit. The sponsor may wish to make clarifying changes to this provision.
- The sponsor of the bill may want to include a referendum in the bill as provided in the Notice of Legislation.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

None.

¹⁹ This change may have implications related to the requirements of Article III, Section 10 of the Florida Constitution and section 11.02, Florida Statutes, which provide for notice of special or local legislation to be published, in the absence of a referendum. It is important to note, however, that such notice may be general and the notice that was published provides the substance of the proposed local bill,